

Internal Revenue Service

Number: **201405012**
Release Date: 1/31/2014
Index Number: 884.08-10

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:01
PLR-134703-12
Date:
October 24, 2013

In Re:

TY =

Taxpayer =

Acquirer =

Country A =

Year 1 =

Year 2 =

Date A =

Date B =

Date C =

Business A =

Dear :

This replies to a letter dated July 5, 2012, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file a Form 8848 (Consent to Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884-2T(a)).

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on

examination.

Taxpayer, a foreign corporation organized in Country A, is a subsidiary of a Country A corporation that was publicly traded in Country A until its stock was acquired by an unrelated company in Year 1. Taxpayer operates Business A in the United States through a branch. The Taxpayer's activities in the United States consist primarily of project management, engineering, research and development, sales, and customer support. Taxpayer represents that, up until the acquisition of its parent in Year 1, it timely filed Forms 1120-F (U.S. Income Tax Return of a Foreign Corporation) reporting its dividend equivalent amounts and excess interest, if any, since it began operating in the United States through a branch.

On Date A of Year 1, Taxpayer was deemed to have sold all its assets to an unrelated person. A foreign corporation is not subject to the branch profits tax for the taxable year in which it completely terminates all of its U.S. trade or business, provided the foreign corporation complies with the requirements of Treas. Reg. § 1.884-2T(a)(2)(i)(B) and (D). Treas. Reg. § 1.884-2T(a). Subsection (D) requires that the foreign corporation attach Form 8848 (Consent to Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884-2(a) and (c)) to its income tax return for the year of termination. Form 8848 must be filed on or before the due date (including extensions) prescribed for filing the foreign corporation's income tax return for the year of complete termination. Treas. Reg. § 1.884-2(a)(2)(ii).

Taxpayer filed its 1120-F on Date C of Year 2, approximately one year after Date B of Year 1, the due date for the return. Taxpayer attached Form 8848 to its Form 1120-F with a statement that it was filing the Form because it had completely terminated all of its U.S. trade or business during the tax year. Recognizing that Form 8848 was not filed on or before the due date for its income tax return for the year of termination, Taxpayer computed its branch profits tax on Form 1120-F as if it did not qualify for the benefits of the complete termination rules. Taxpayer is now requesting an extension, under Treas. Reg. § 301.9100-3, of the time permitted to file Form 8848 to support a claim for a refund of the branch profits tax paid with its Form 1120-F.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in Treas. Reg. § 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3 provides standards for extensions of time for making regulatory elections when the deadline for making the election is other than a due date

prescribed by statute.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Except as otherwise provided in Treas. Reg. § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the IRS. Treas. Reg. § 301.9100-3(b)(1)(i).

In the present situation, Treas. Reg. § 1.884-2(c)(2)(iii) fixes the time to file Form 8848. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until Date C of Year 2 to file Form 8848. The granting of an extension of time to file Form 8848 is not a determination that Taxpayer is otherwise eligible for a complete termination of its U.S. trade or business. Treas. Reg. § 301.9100-1(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including whether the Taxpayer has filed a timely and valid claim for refund for branch profits paid on Date C of Year 2. In addition, no relief is provided with respect to any interest or penalties associated with the late filing of Form 1120-F.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to the amended return through which the Taxpayer requests a refund of the branch profits tax. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Elizabeth U. Karzon
Chief, Branch 1
Office of Associate Chief Counsel
(International)